

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
INDUSTRIAL WINDOW CORP.,

Plaintiff,

-against-

FEDERAL INSURANCE COMPANY,

Defendant.
-----X

Case No.: 07 CV 10959
(Rakoff, J.)

ANSWER

Defendant, Federal Insurance Company ("Federal"), by its attorneys, Milber Makris Plousadis & Seiden, LLP, as and for its answer to the complaint alleges, on information and belief, as follows:

1. Admits that Federal issued a payment bond (No. 8189-23-00) listing Federal as surety and Beys General Construction Corp. as principal and begs leave to refer to that bond for the terms and conditions thereof. Except as so admitted, denies each and every other allegation contained in paragraph "1" of the complaint.
2. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of the complaint.
3. Denies the allegations contained in paragraph "3" of the complaint.
4. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of the complaint.
5. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "5" of the complaint.
6. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "6" of the complaint.
7. Admits the allegations contained in paragraph "7" of the complaint.

AS AND FOR AN ANSWER TO COUNT 1

8. In response to the allegations set forth in paragraph "8" of the complaint, the undersigned defendant repeats, reiterates and realleges each and every response applicable to the allegations contained in paragraphs "1" through "7" of the complaint as if fully set forth at length herein.

9. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "9" of the complaint.

10. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "10" of the complaint.

11. Admits that Federal issued a payment bond (No. 8189-23-00) listing Federal as surety and Beys General Construction Corp. as principal and begs leave to refer to that bond for the terms and conditions thereof. Except as so admitted, denies each and every other allegation contained in paragraph "11" of the complaint.

12. Denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "12" of the complaint.

13. Denies the allegations contained in paragraph "13" of the complaint.

14. Denies the allegations contained in paragraph "14" of the complaint.

15. Denies the allegations contained in paragraph "15" of the complaint.

16. Denies the allegations contained in paragraph "16" of the complaint.

17. Denies the allegations contained in paragraph "17" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. This action is barred by the alternate dispute resolution clause incorporated into the payment bond and the underlying subcontract between plaintiff and Beys General Construction Corp.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. The complaint fails to state a cause of action upon which relief can be granted against Federal.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. Plaintiff's complaint is barred by its failure to give notice as required by State Finance Law Section 137 and/or as required by contract or bond.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

21. Plaintiff's claims are barred by virtue of the doctrines of laches, equitable estoppel and/or avoidable consequences.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

22. Plaintiff's claims are barred by virtue of the doctrines of waiver and release.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

23. Plaintiff lacks standing to bring this action.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

24. Plaintiff's claims are barred by unclean hands.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

25. Plaintiff's claims herein are barred by the applicable statute of limitations.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

26. Plaintiff's claims are barred by plaintiff's failure to satisfy applicable conditions precedent for the payment bond and/or the underlying subcontract.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

27. Plaintiff's claims are barred due to plaintiff's breach of contract.

WHEREFORE, the defendant Federal Insurance Company demands judgment:

- (A) Dismissing the complaint;
- (B) Awarding it the costs and disbursements of this action; and
- (C) Awarding it such other and further relief as this Court may deem just, proper and equitable.

Dated: Woodbury, New York
January 21, 2008

MILBER MAKRIS PLOUSADIS
& SEIDEN, LLP

By: 

Joseph J. Cooke, Esq. (JC 6888)

Attorneys for Defendant

Federal Insurance Company

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TO:

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